

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

WILLIAM MELVIN McGRADY,

*Plaintiff,*

v.

KELVIN JOHNSON,  
938 Main Street  
Charleston, South Carolina 29407

and

LEXINGTON INTERMODAL, LLC,  
John M. Manos CO, LPA, Registered Agent  
739 East 140<sup>th</sup> Street  
Cleveland, Ohio 44110

*Defendants.*

Civil Action No.: 7:19cv458

CLERK'S OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

JUN 19 2019

JULIA C. DUDLEY, CLERK  
BY: *AS Eagle*  
DEPUTY CLERK

COMPLAINT

The Plaintiff, William Melvin McGrady, by counsel, moves the Court for judgment against the Defendants Kelvin Johnson and Lexington Intermodal, LLC, jointly and severally, and in support thereof, respectfully allege as follows:

I. This is a civil action, against Defendants Kelvin Johnson and Lexington Intermodal, LLC. This action arises out of a collision which occurred when the tractor trailer combination rig, driven by Defendant Johnson crashed into the rear of the vehicle operated by William Melvin McGrady.

## PARTIES

2. William Melvin McGrady is a citizen of the State of Virginia.

3. Kelvin Johnson is a citizen of the state of South Carolina. He was the operator of the tractor pulling the trailer, that collided into the rear of the vehicle operated by William Melvin McGrady.

4. Lexington Intermodal, LLC, under whose dispatch and direction Defendant Kelvin Johnson was operating the subject tractor-trailer at the time of the subject collision, is organized under the laws of the State of Ohio and maintains its principal place of business in Ohio. Based on information and belief, Lexington Intermodal, LLC has two members, Bryan Hoffman and John Kabat, both who are believed to be residents of the state of Ohio.

5. Lexington Intermodal, LLC, is a "motor carrier" as defined by 49 CFR 390.5. Lexington Intermodal, LLC's U.S. DOT registration number, which was in effect at the time of the subject collision, is 782294. Pursuant to CFR 392.1, Lexington Intermodal, LLC, and/or Defendant Kelvin Johnson, were, at all times relevant to this complaint, required to comply with the safety requirements contained in Part 390 of the Code of Federal Regulations to the extent that each of them were responsible for management, maintenance, operation, or driving of commercial vehicles, or the hiring, supervision, training, assigning, or dispatching of drivers.

6. Lexington Intermodal, LLC was the employer and/or principal and/or dispatcher and/or supervisor of Defendant Kelvin Johnson. At times relevant to the matters alleged herein, Lexington Intermodal, LLC exerted control over Defendant Kelvin Johnson's work on its behalf, including on the day of the subject collision. Defendant Kelvin Johnson was acting in the course and scope of his employment and/or agency of Lexington Intermodal, LLC and was acting under the dispatch, direction, and supervision of Lexington Intermodal, LLC at the time of the subject collision that inflicted injuries upon William Melvin McGrady.

#### JURISDICTION AND VENUE

7. This Court has original diversity jurisdiction over this action under 28 U.S.C. § 1332, in that the amount of controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and cost and Plaintiff William Melvin McGrady is a citizen of Virginia. Defendant Kelvin Johnson is a citizen of South Carolina. Defendant Lexington Intermodal, LLC is organized and has its principal place of business in the State of Ohio, and the two members of Lexington Intermodal, LLC, Bryan Hoffman and John Kabat, based upon information and belief, are citizens of Ohio. Accordingly, the controversy is between citizens of different States.

8. This Court has personal jurisdiction over Defendant Lexington Intermodal, LLC because it purposefully availed itself of the privilege of

conducting activities in Virginia, this cause of action arises out of those activities directed in Virginia, and the exercise of personal jurisdiction under the circumstances of this case would be constitutionally reasonable.

9. This Court has personal jurisdiction over Defendant Kelvin Johnson because he was operating a motor vehicle in Carroll County, Virginia at the time of the subject collision.

10. Venue is proper in this district pursuant to 28 U.S.C. 1391 because the collision occurred in the County of Carroll, Virginia.

### FACTUAL ALLEGATIONS

11. On or about January 23, 2017 at approximately 1:30 p.m., the Plaintiff, William Melvin McGrady, was operating a motor vehicle traveling east on Route 58, at or near its intersection with Airport Road, in the County of Carroll, Virginia.

12. On the same date, and at the same general location and time, as well as at all times relative to this Complaint, Defendant Kelvin Johnson who was an agent and/or employee and/or dispatched by and/or under the control of Lexington Intermodal, LLC, and acting in the course and scope of such agency, employment and/or control, was operating a vehicle traveling east on Route 58, at or near its intersection with Airport Road, in the County of Carroll, Virginia.

13. Defendant Kelvin Johnson did then and there so carelessly, recklessly, and negligently, operate the motor vehicle so as to cause it to collide into the back


of the vehicle which the Plaintiff was operating. Defendant Kelvin Johnson was charged with following too closely in violation of § 42.2 - 816 of the *Code of Virginia*, and pled nolo contendere to this charge arising out of the subject collision.

14. As a proximate result of the negligence of Kelvin Johnson and the concurrent and/or vicarious negligence of Lexington Intermodal, LLC, the Plaintiff, William Melvin McGrady, was caused to sustain serious and permanent injuries; has suffered and will continue to suffer great pain of body and mind; has sustained permanent disability, has and in the future will suffer inconvenience, and has incurred and will incur in the future, hospital, doctors and related bills in an effort to be cured of said injuries.

WHEREFORE, Plaintiff moves the Court for judgment against Defendants Kelvin Johnson and Lexington Intermodal, LLC, jointly and severally, in the sum of Eight Hundred Fifty Thousand Dollars and Zero Cents (\$850,000.00) in compensatory damages together with prejudgment interest and his costs in this behalf expended.

TRIAL BY JURY IS DEMANDED.

WILLIAM MELVIN McGRADY

By:   
Of Counsel

P. Brent Brown (VSB No.: 18760)  
William A. Jennings (VSB No.: 24176)  
BROWN & JENNINGS, PLC  
114 Market Street, Suite 210  
Roanoke, Virginia 24011  
(540) 444-4010 – Phone  
(540) 444-4011 – Fax  
[\[brent@brownjenningslaw.com\]](mailto:brent@brownjenningslaw.com)  
[\[andy@brownjenningslaw.com\]](mailto:andy@brownjenningslaw.com)

Peter A. Katt (VSB No.: 32700)  
Stephen C. Huff (VSB No.: 92301)  
CRANDALL & KATT  
366 Elm Avenue  
Roanoke, Virginia 24016  
(540) 342-2000 – Phone  
(540) 345-3527 – Fax  
[\[pkatt@crandalllaw.com\]](mailto:pkatt@crandalllaw.com)  
[\[shuff@crandalllaw.com\]](mailto:shuff@crandalllaw.com)

*Counsel for Plaintiff*

LAW OFFICES OF  
CRANDALL & KATT  
366 ELM AVENUE, S.W.  
ROANOKE, VIRGINIA 24016